

No. 14-17-00932-CR

In the Court of Appeals
For the Fourteenth District of Texas
At Houston

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CHRISTOPHER A. PRINE
Clerk

—◆—
No. 1435566

In the 178th District Court
Of Harris County, Texas

—◆—
Sandra Jean Melgar
Appellant

v.

The State of Texas
Appellee

—◆—
State's Appellate Brief
—◆—

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Oral Argument Not Requested

Statement Regarding Oral Argument

The appellant requested oral argument to argue her sufficiency point. According to the appellant, “[d]ue to the record’s length and complexity, oral argument would be invaluable to the Court...” (Appellant’s Brief at 3).

The State believes the contrary is true. The record is the record. Any verbal descriptions of it by counsel will not change it. The odds of oral argument creating confusion are at least as good as the odds of oral argument significantly aiding this Court. This case is best evaluated on the briefs and the record. The State does not request oral argument.

Identification of the Parties

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Appellant:

Sandra Jean Melgar

Counsel for the Appellant:

George McCall Secrest, Jr. and Allison Secrest
— Counsel at trial and on appeal

Trial Court

Kelli Johnson and Susan Baetz Brown
— Presiding judges

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Statement of the Case

The appellant was indicted for murder (CR 8). She pleaded not guilty. (4 RR 11). A jury found her guilty as charged and assessed punishment at twenty-seven years' confinement and a \$10,000 fine. (CR 427, 439, 443). The appellant filed a motion for new trial, which the trial court denied. (CR 453-538). The appellant filed a notice of appeal and the trial court certified her right of appeal. (CR 45, 47).

Introduction

The appellant raises two points of error. She raises a brief point of error about something that happened during jury deliberations, but her main point challenges the sufficiency of the evidence. In support of the sufficiency claim, she has provided this Court with a 156-page statement of facts. This statement of facts includes discussions of what *wasn't* admitted at trial, argumentative commentary,¹ and pro-defense evidence the jury was free to discredit. This statement of facts is of limited value for a sufficiency review.

¹ *E.g.*, Appellant's Brief at 33 ("But this ploy on the prosecution's part was disingenuous..."), 70 n.82 (describing trial prosecutor's argument as "sheer sophistry"), 78 ("[The investigator's] partiality and result-oriented investigative technique was exemplified..."), 82 ("One of many good examples where the prosecutor and [witness] attempted to 'misdirect' the jury..."), 113 ("Clearly, [the State's expert witness] was an unabashed professional, partisan witness for the prosecution.").

The State's statement of facts abides by the ordinary rules of sufficiency review: Reviewing the evidence admitted at trial in the light most favorable to the verdict, and giving appropriate deference to the jury's authority to settle any conflicts in the evidence.

The State's statement of facts will be fairly brief because the evidence that supports the verdict is straightforward: The appellant was found alone in her house with her murdered husband; between the murder and the arrival of others she had most of a day to clean and stage the scene; she gave police an incredible version of events that is in part directly contradicted by evidence; and there is no hard proof of anyone else being there. The State will use the argument portion of its brief to point out specific circumstances that create inferences of guilt and to respond to the specific points the appellant makes that require a response.

Statement of Facts

Jaime Melgar, the appellant's husband, had invited several of his family members over for dinner around 3:30 to 4:00 on the afternoon of December 23, 2012. (9 RR 148). When the family members arrived a bit late at 4:30, they knocked on the door but no one answered. (9 RR 150). The door was locked. (9 RR 151).

The family members saw an open garage door. (9 RR 153). The Melgar home had a garage with two doors; one side of the garage was used for parking and the other side was used for storage. (Def.'s Exs. 2018, 2022-24). The open door was on the storage side of the garage. (9 RR 153). Jaime's brother, Herman, went into the garage and found the door from the garage to the house was "closed but unlocked." (9 RR 156). Herman went into the house and began calling for Jamie and the appellant. (9 RR 156).

Herman heard the appellant call out; he followed the voice to a closet in the master bathroom. (9 RR 156-57). There was a chair "jamming" the closet door shut. (9 RR 159). Herman moved the chair and found the appellant inside; her wrists were tied behind her back with a purple cord and her ankles were tied with a scarf. (11 RR 116). The appellant said someone had hit her and her head hurt. (9 RR 194-96). Herman was unable to untie the scarf, but the appellant directed him to a pair of scissors in a drawer and he cut the scarf. (9 RR 164-65).

As this was happening, other family members found Jaime's body in the closet of the master bedroom. (9 RR 167-69; *see* State's Exs. 1, 2 (diagrams of relevant area of Melgar home)). Jaime was obviously dead.

(6 RR 24-25; State's Ex. 270). He had 31 stab or incised (*i.e.*, slash) wounds. (State's Ex. 677 (autopsy report)).

All or nearly all the injuries were inflicted as Jaime was standing inside the closet facing out. (9 RR 42-43). Jaime had several injuries to the outside of his hands and arms, showing he was alive and trying to block knife blows during the attack. (8 RR 173). Immediately behind where Jaime stood in the closet as he was stabbed, at about waist height, was a loaded pistol. (4 RR 136-37; State's Exs. 377-78). But all of Jaime's injuries were on the front of his body, showing he never turned his back on the attacker to get the gun.² (9 RR 44-45). All of the stab wounds were fairly shallow; the deepest was three inches but most were less than two. (8 RR 180-86; State's Ex. 719A).

There were two types of loose bindings on Jaime's body: A telephone cord wrapped around his ankles and a red cord across his chest. (State's Exs. 401, 406). Neither left marks on the body. (8 RR 192-93). The medical examiner would later testify that the telephone cord was

² The appellant told police she thought Jaime was in the closet because he was going for the gun. (8 RR 111-12). She said she was aware there was a gun in the closet but did not know where, exactly, it was. (8 RR 112). This indicates the gun was likely Jaime's and he would have known where it was. Supporting this inference is the fact that the gun was in a location where he would have seen it anytime he moved his shirts around.

put around Jaime's ankles after his death. (8 RR 192). This opinion was based on the fact that Jaime's ankles were tied in a crossed position, and if he had been standing up and struggling while his ankles were tied in a crossed position there would have likely been some sort of injury from the cord. (8 RR 192). Part of a plastic dry cleaning bag was tied up in the cords, showing the cord was tied while Jaime was already in the closet. (9 RR 60).

After the appellant was cut loose, she asked where Jaime was. (9 RR 197). She went looking for Jaime and began crying when she saw his body in the closet. (9 RR 186). Apparently another family member had called the police, because at that point EMS and the police arrived. (6 RR 21, 27; 9 RR 186).

The first deputies to arrive on scene went through the house to confirm there was no one else there. (6 RR 80). They observed that the tub in the master bathroom was half full of water, and there was a white blouse and a large chef's knife in it. (6 RR 80-81). Harris County Precinct 4 Deputy Jennifer Martinez noted the appellant was crying, "but she did not have tears. She was hyperventilating....really nervous." (6 RR 81). Martinez did not observe any marks on the appellant's wrists or ankles. (6 RR 92-93). The appellant told Martinez that she and Jaime

had been taking a bath, and the last thing she remembered was that Jaime got out of the bath to let their dogs in, because their dogs were barking. (6 RR 83). The appellant told Martinez she “commonly has blackouts and seizures.” (6 RR 83).

After talking with Martinez the appellant was evaluated by a paramedic. (6 RR 86). The appellant told the paramedic she had no injuries, but the left side of her head hurt. (6 RR 26-27, 33). The paramedic examined the appellant’s head and found no signs of injury. (6 RR 33-35). The appellant told the paramedic that beginning around 10:30 the prior evening, she and Jaime had spent a couple of hours in the bathtub together. (6 RR 31). She said the last thing she remembered was getting out of the bathtub and getting dressed around 1:00 a.m. (6 RR 31-32). The appellant told the paramedic she had a seizure disorder and, due to her head and joints hurting when she woke up, believed she had had a seizure. (6 RR 32).

Crime scene investigators from the Harris County Sheriff’s Office arrived on the scene later. (4 RR 43). There were no signs of forced entry on any of the windows or doors, suggesting that if the doors were locked the only way in or out would have been through the garage. (4 RR 58-

59, 77-78, 163-64). In the dining room was a mop and bucket; Martinez said the bucket smelled of bleach. (4 RR 70; 6 RR 93; State's Ex. 81).

The scene did not look like a typical burglary. (6 RR 83). Around the house many drawers were slightly opened, containing still-folded clothing. (6 RR 83; State's Ex. 146; *see* State's Ex. 242 (chest with drawers open, and tubes of lotion standing vertically inside)). One bedroom had a jewelry box on top of a dresser with well-ordered jewelry still on and in it. (4 RR 87; 6 RR 83; State's Exs. 146, 150). Items that were easy to transport and sell were still laying around in plain view. (6 RR 95; *see* State's Exs. 223 (camera in opened drawer) 254 (cell phone on bed)).

In the master bathroom an investigator noticed a pillow sham on the floor in front of the closet where the appellant had been found. (6 RR 214-16). The investigator did an experiment and found that it was possible, by placing the chair on the pillow sham and then pulling the pillow sham under the door, for someone to jam the chair under the closet door knob from inside the closet. (6 RR 214-17; *see* State's Ex. 672 (video of experiment)). When the investigator conducted his experiment, he found that the pillow sham got stuck in the door frame at the same point where there was a rip in the pillow sham. (6 RR 217).

The appellant agreed to speak to police. Over the course of her interview her story evolved somewhat, but it centered on her being unconscious in the bathroom closet during the killing. (State's Ex. 673). She said that she and Jaime were in the bathtub and around 1:00 a.m. he got up to let the dogs in because they were barking. (State's Ex. 673). She said that Jaime took a long time to let the dogs in, so after fifteen minutes she got up, went to the closet to change clothes, and that was the last thing she remembered until she woke up in the closet bound with a pain in her head. (State's Ex 673). She later said she thought she must have had a seizure, either spontaneously or from being hit on the head. (State's Ex. 673). She told officers she had been having increasingly frequent seizures in the preceding months. (State's Ex. 673). By the end of the interview she believed she had been hit on the head, which caused her to have a seizure. (State's Ex. 673).

At trial, the State introduced medical records showing the appellant had been telling her doctor for years that her seizure condition was stable. (7 RR 96-98; State's Ex. 674). In July 2012 (five months before the murder) and April 2013 (three-and-a-half months after the murder), the appellant told her doctor she had had no seizures. (7 RR 98-99; State's Ex. 674).

A few days after the murder the appellant's daughter, Elizabeth, contacted investigators with a list of items she believed may have been stolen during the purported burglary. (10 RR 175-76). Many of these items had been collected by the sheriff's office during the investigation. (10 RR 177-78). Elizabeth also reported that a guitar was missing; an investigator noted that a closed, empty guitar case was at the scene in an orderly location, thus it seemed unlikely the guitar had been removed from the case and taken during a burglary (10 RR 179). Elizabeth also reported that some unspecified "medications" and an undescribed television were missing. (10 RR 178-79).

Reply to Point One

The circumstantial evidence is sufficient to support a conviction. The appellant's arguments to the contrary all involve giving evidentiary weight to defensive evidence the jury was free to discredit as part of its obligation to determine the weight and credibility of the evidence.

In her first point, the appellant claims that the evidence is legally insufficient to support her conviction. (Appellant's Brief at 162-96).

I. Standard of Review: This Court views all evidence in the light most favorable to the verdict, deferring to all credibility determinations the jury could have made in favor of the verdict.

On sufficiency review, appellate courts look at the evidence in the light most favorable to the verdict and determine whether any rational factfinder could have found the elements of the offense beyond a reasonable doubt. *Temple v. State*, 342 S.W.3d 572, 584 (Tex. App.—Houston [14th Dist.] 2010) *aff'd*, 390 S.W.3d 341 (Tex. Crim. App. 2013). In *Temple*, this Court explained how to evaluate the sufficiency of the evidence in circumstantial-evidence cases:

Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. The Court of Criminal Appeals has affirmed murder convictions based solely on inferences raised by circumstantial evidence. See, e.g., [*Clayton v. State*, 235 S.W.3d 772, 778-82 (Tex. Crim. App. 2007)]; *Guevara v. State*, 152 S.W.3d 45, 49–52 (Tex. Crim. App. 2004); *King v. State*, 29 S.W.3d 556, 564–65 (Tex. Crim. App. 2000). An inference is a conclusion reached by considering other facts and deducing a logical consequence from them. Speculation is mere theorizing or guessing about the possible meaning of facts and evidence presented. A conclusion reached by speculation may not be completely unreasonable, but it is not sufficiently based on facts or evidence to support a finding beyond a reasonable doubt. Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative effect of all the incriminating facts are sufficient to support the conviction.

Ibid. (citations omitted).

In considering sufficiency, this Court must consider the “combined and cumulative force” of the circumstances pointing toward guilt. *Clayton*, 235 S.W.3d at 778. Analyzing each circumstance in isolation is known as the “divide-and-conquer” approach to sufficiency review; the Court of Criminal Appeals has disapproved of this approach. *Id.* at 778-79.

This Court may not substitute its judgment for that of the jury by reevaluating the weight and credibility of the evidence. *Brooks v. State*, 323 S.W.3d 893, 900 (Tex. Crim. App. 2010). It is the jury's responsibility to resolve any conflicts in the evidence fairly, weigh the evidence, and draw reasonable inferences. *Ibid.* “Although the parties may disagree about the logical inferences that flow from undisputed facts, where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous.” *Broughton v. State*, 569 S.W.3d 592, 608 (Tex. Crim. App. 2018) (quotation and brackets omitted).

The jury is the exclusive judge of the facts and the weight to be given to the testimony. *Bartlett v. State*, 270 S.W.3d 147, 150 (Tex. Crim.

App. 2008). A jury, as the sole judge of credibility, may accept one version of the facts and reject another, and it may reject any part of a witness's testimony. *Broughton v. State*, 522 S.W.3d 714, 726 (Tex. App.—Houston [1st Dist.] 2017) *aff'd*, 569 S.W.3d 592 (Tex. Crim. App. 2018).

Even in a circumstantial-evidence case, the State does not have to disprove possibilities other than guilt. *See Laster v. State*, 275 S.W.3d 512, 520–21, 522–23 (Tex. Crim. App. 2009) (reiterating the rejection of the outstanding reasonable hypothesis analytical construct). That the defense presented a different version of events does not undermine the sufficiency of the evidence. *Turro v. State*, 867 S.W.2d 43, 47 (Tex. Crim. App. 1993) (“The evidence is not rendered insufficient simply because [the defendant] presented a different version of the events”). Sufficiency review examines whether the evidence was sufficient to support the jury’s conclusion, not whether it could support some other conclusion. *Ibid.* (reversing intermediate court: “Rather than relying on the judgment of the fact finder, the [intermediate] court effectively presumed the appellant’s innocence by considering hypotheses of innocence. This method of review has been firmly rejected by this Court.”).

II. Argument

A. The first step of a sufficiency review here is to strip away all the evidence the jury was free to discredit.

The appellant spends twenty pages of her brief using bullet points to describe what the evidence showed. (Appellant's Brief at 173-93). Most of this either stems from the appellant's self-serving statement, which the jury was free to disbelieve, or involves making pro-defense inferences from evidence the jury could have interpreted differently or disregarded. The appellant's brief presents this Court with a jury argument, not a sufficiency argument.

The appellant treats the core of her story as true and argues that the State failed to fit a theory of guilt within her narrative. But nothing requires the jury or this Court to accept the appellant's version of events. Other than her statement, there is no evidence of her and Jaime being in the bathtub for hours, of the dogs barking, or of her passing out in the closet. Although the jury was free to disbelieve her statement purely based on her demeanor, the inconsistencies, gaps, and proven lies in her story provided a good reason for the jury to believe the appellant lied to police to conceal her guilt. Without the appellant's statement, the evidence here shows two people going into a house one night, and the next day one of them is found stabbed to death.

The appellant's brief relies on the testimony of family members who found her in the closet. This Court need not call them liars to understand how the jury was free to discredit parts (at least) of their testimony. How "well-tied" was the appellant when she was found? How emotional was she? Was the pillow sham under the chair when they arrived? The only sources of information for these details at trial were defense witnesses who had been close in-laws of the appellant's for decades. Even while believing the core of their testimony, the jury was free to infer that parts of their testimony were either fudged in favor of a woman they did not want to believe was a murderer, or misremembered by witnesses who didn't take notes when they unexpectedly stumbled onto a horrific scene.

Finally, the appellant spends much of her brief attacking the quality of the police investigation. The appellant presented that matter squarely to the jury (through, among other sources, 165 pages of testimony by defense witness John William Belk (11 RR 15-72, 76-184)) and it concluded that any deficiencies in the investigation did not create a reasonable doubt of the appellant's guilt. Sufficiency review is not about

reviewing the jury's assessment of the weight and credibility of the evidence, it is about determining whether the evidence the jury could have believed rationally supports its verdict.

B. The circumstantial evidence provides an ample basis to infer the appellant's guilt.

1. The appellant was at the crime scene at the time of the murder, and there is no evidence anyone else was.

The fact that most clearly points toward an inference of guilt is the appellant's presence at the scene at the time of the murder. *See Gross v. State*, 380 S.W.3d 181, 186 (Tex. Crim. App. 2012) (presence alone is insufficient to support conviction, but combined with other circumstances can support an inference of guilt). The appellant presented herself as a victim, but there is no firm evidence establishing that anyone else was in the house at the time of the murder.

If it were conclusively established that the appellant had been tied up and locked in a closet by someone else, that, obviously, would undermine any inference of guilt from her presence. But the State showed it was possible both for the appellant to jam the chair under the closet doorknob from inside the closet and to tie her own hands behind her

back. (*See* 11 RR 153-55 (prosecutor demonstrating getting out of binding); 13 RR 168 (prosecutor describing prior demonstration); State's Ex. 672 (video of chair being pulled on pillow sham)).

The appellant points to some unknown DNA samples found at the scene. (Appellant's Brief at 185). As is almost always the case with DNA, though, nothing in the record points toward when that DNA was left at the scene.

The lack of evidence of forced entry also points toward the appellant being alone in the house with Jaime at the time of the murder. It is true that the garage door was opened, but no evidence shows *when* it was opened. The open garage door was on the side of the garage being used for storage. (State's Ex. 59). The appellant admitted in her interview she and Jaime entered through the other garage door that night, and there was no reason for the storage-side door to be open.

The jury *could* have looked at this evidence and concluded Jaime accidentally opened that garage door and it remained opened all night, allowing the unknown killer to enter and leave without a trace. But that's not what the jury concluded. The jury instead looked at the appellant's incredible statement, the evidence of staging, the nature of Jaime's death, and that fact that the appellant knew relatives would be coming

over the next afternoon and inferred that the appellant killed Jaime and opened the garage door so her relatives could come in and discover her, self-bound, in a closet. This Court must defer to the jury's determination of which inference to draw from this ambiguous circumstance.

2. Evidence of staging supports an inference of guilt.

Multiple witnesses described the scene as looking atypical for a burglary scene. (6 RR 66-67 (experienced paramedic describing scene as “fishy” because it “just didn’t seem to all go together), 83, 95 (deputy describing ways in which scene did not look like a burglary), 9 RR 59-60 (police expert describing scene as “staged”). Ultimately there was no hard evidence of anything being stolen from the home. The backpack containing jewelry and a gaming system left in the garage (5 RR 117-18) is ambiguous—it’s not obvious why such a thing would be in the garage, but it seems peculiar for burglars to have taken the trouble to commit a capital murder, put these valuable items in a backpack, and then just leave the loot on the way out the door. Given the valuable, easy-to-sell items left around in plain view, the jury was free to infer from the physical evidence and opinion testimony that no burglary occurred and the scene was staged.

When one spouse is murdered in the home and the other spouse is put on trial, evidence that the scene was staged to look like a burglary is a circumstance that supports an inference of guilt. *Temple v. State*, 342 S.W.3d 572, 588 (Tex. App.—Houston [14th Dist.] 2010) *aff'd*, 390 S.W.3d 341 (Tex. Crim. App. 2013).

It was not just the house that was staged. The phone cord placed around Jaime's ankles was placed there after his death. (8 RR 192). This supports an inference that the killer altered the scene after the murder, and it makes little sense that a burglar would bother to do that.

3. Lies, inconsistencies, and implausible claims in the appellant's statement support an inference of guilt and gave the jury adequate reason to disbelieve her.

i. The appellant lied to police about the frequency of her seizures.

As part of her explanation for why she was unconscious and didn't hear her husband getting stabbed to death in the next room, the appellant told police she must have had a seizure. (State's Ex. 673). She gilded this lily by adding that her medical condition had been deteriorating and she was having seizures on an increasingly frequent basis, "at least once a month." (State's Ex. 673). At trial, though, the State introduced med-

ical records showing she had told doctors both before and after the murder that her condition was stable and she was not having seizures. (7 RR 96-99; State's Ex. 674).

Even the defense's evidence shows the appellant lied to police about the frequency of her seizures. In April 2013, three-and-a-half months after the murder, the appellant visited a neurologist she had seen in the 90s about her seizures, but whom she had not seen for at least ten years. (13 RR 8-9). At a follow-up appointment in June she told that doctor her last seizure had been in December, the month the murder occurred. (13 RR 14).

What she told this doctor was self-reported, so there is no way to verify whether she had had a seizure in December. And this conflicts with the record from her primary care provider, which shows in April 2013, shortly before she saw this neurologist, she had reported having no seizures. (7 RR 98-99). But even if what she told this neurologist were the truth, it still shows her statement to police that she was having "at least" one seizure per month and the rate of seizures was increasing was a lie. And it was a lie about an issue at the heart of the investigation—why she didn't hear her husband being brutally murdered in the next room.

“Lying to police is a circumstance of guilt.” *Temple*, 342 S.W.3d at 588.

ii. The appellant’s claim that she saw and heard nothing before getting out of the bathtub is implausible.

Aside from this lie, other parts of the appellant’s story are, at least, implausible. She described sitting in the bathtub for *fifteen minutes* after Jaime went to let the dogs in. This was not a large house. (See State’s Ex. 2 (diagram of home)). Unless Jaime closed the bathroom door when he left—an unnecessary act when they were alone in the house and, according to her story, had just finished having sex³—the place in the bathtub where the appellant claimed to be seated had a clear view of the entryway into the bedroom, as well as the closet where Jaime was murdered. (See State’s Exs. 5, 215, 730 (showing view from tub toward bedroom)). Yet the appellant told police she neither heard nor saw anything, nor did she seem to think it worth investigation that Jaime was gone so long to perform such a minor task.

³ The appellant never mentioned Jaime closing the door.

“[I]mplausible explanations to the police are probative of wrongful conduct and are also circumstances of guilt.” *Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004).

iii. The appellant’s description of how she was laying in the closet changed, and is inconsistent with Herman’s description of how he found her.

The appellant gave police almost no details of the sixteen hours she claims she was tied up in the closet. Those few details she gave, however, are inconsistent. In her statement she first described having her back against the door facing the shoe rack inside. She said that she was unable to move due to the binding and having suffered a seizure. But she also described seeing under the door as Herman moved the chair to free her. To see under the door would have required her to turn around.

Herman testified that when he found the appellant she was laying down with her back to the door. (9 RR 161). This is inconsistent with the appellant’s statement that she *saw* Herman move the chair.

- iv. The defense introduced evidence showing at least two attempts to log into the appellant's computer on the night of the murder. This conflicts with her timeline and is unaccounted for in her story.**

The defense introduced a forensic report detailing the computer usage at the Melgars' house during the relevant period. (Def.'s Ex. 41). Although the expert who produced the report claimed that no one logged on or off the Melgars' computers on the night of the murder, the report shows someone did. (*See* 13 RR 110).

The report shows multiple login attempts for a laptop under the username "Sandy" on the night of the murder. (Def.'s Ex. 41 (23 RR 140)). The reports shows that the last time an incorrect password was entered was "11:02:27" on December 22, 2012, though the report does not specify if that is a.m. or p.m. The report also shows a successful login at 11:39:15 p.m.

According to the appellant's version of events, on the night of the murder she and Jaime had dinner at Los Cucos, stopped at CVS for Coke and Sprite, and went home where they made drinks and got straight into the bathtub. Receipts showed they paid at Los Cucos at 8:59 p.m., and checked out of CVS at 9:33 p.m. (State's Exs. 417, 419). The appellant's description of the evening did not involve using a laptop,

nor was there even a gap in time that would have allowed the use of a laptop at 11:39.

Had the appellant or Jaime been using the laptop in the bathtub, it should have been in the bathroom or bedroom, as the appellant's version of events would not allow for her to put the laptop up. Instead, it was found in the home office.⁴ (4 RR 169). This is another inconsistency between the appellant's statement and the evidence, and another reason the jury could infer guilt based on the appellant's misleading version of events.

4. The nature of Jaime's wounds and the positioning of his body suggest the killer was a weak person Jaime did not want to shoot. That points to the appellant, not a home invader.

At trial the appellant based part of her argument on being too weak to commit such a physical murder. (*See* 13 RR 136-37). But all of Jaime's injuries were shallow, with none of the stab wounds going more than three inches deep and most being much shallower than that. (State's Ex. 719A).

⁴ A computer was found in the garage, but that was a different computer. The computer with the 11:39 login was a Gateway, but the computer in the garage was a Toshiba. (Def.'s Ex. 41 (23 RR 140); 5 RR 55).

Jaime had defensive injuries on the outside of his arms and hands—as though he was trying to block blows—but he had no one else’s DNA under his fingernails, showing he did not scratch his attacker trying to fight back. (8 RR 173-74; Def’s. Ex. 22). He had no injuries to his back, showing that he was facing his attacker for the entire assault. (9 RR 44-45). Yet had he simply turned around where he was standing in the closet, there was a loaded pistol sitting on a shelf at waist height. (4 RR 136-37; State’s Exs. 377-78).

At trial, defense counsel argued that the fact that Jaime was in this closet showed that he went for the gun because he was being attacked by a home invader. (8 RR 111-13). The State supposes that is a possible inference that could be drawn from the evidence. However, one would then have to believe that Jaime encountered a home invader and made it all the way to the closet without being stabbed—because there is no blood anywhere else in the house—but once there he turned around to face his attacker and, while withstanding dozens of weak knife attacks, never reached for the gun.

A different inference to draw from the evidence is that the murderer was someone Jaime did not wish to shoot. Someone weak, who

Jaime thought he could fend off with his hands. Someone like the appellant.

C. The appellant points toward some ambiguous circumstances that do not undermine the legal sufficiency of the evidence.

As is always the case in circumstantial evidence cases, not every circumstance here unambiguously points toward guilt. This case comprises some circumstances pointing toward guilt, some circumstances that are ambiguous but could point toward guilt, and some circumstances that are just ambiguous. What is important to note, though, is that none conclusively point toward innocence. “In circumstantial evidence cases, it is not necessary that every fact and circumstance point directly and independently to the defendant's guilt; it is enough if the conclusion is warranted by the combined and cumulative force of all the incriminating circumstances.” *Temple v. State*, 390 S.W.3d 341, 359 (Tex. Crim. App. 2013) (quotation and citation omitted).

1. The lack of blood evidence is, at worst, an ambiguous circumstance.

The appellant points to the lack of Jaime’s blood on her or on various surfaces of the home. (Appellant’s Brief at 183-87). This is an

ambiguous circumstance. Other than the closet, the house was remarkably blood-free. From the gruesomeness of the murder, it should be expected that the murderer would have at least some of Jaime's blood on her, but there are no tracks or blood drops leading away from the closet, and no blood on the opened drawers. (9 RR 58-59). To the degree this circumstance points one way or the other it points toward guilt, as it suggests someone who had the opportunity and motive to clean the scene.

2. The lack of a compelling motive does not conclusively point toward innocence.

From the beginning of trial, the State admitted it had no clear motive. (4 RR 20). Through cross-examination of defense witnesses the State established that the appellant and her husband belonged to a religious group that severely frowned on no-fault divorce, and getting a divorce would cause social repercussions to the appellant. (12 RR 10-12, 15). There was some evidence that could produce an inference that all was not perfect with the marriage—in her interview she told police she was planning to go to San Antonio alone to see her parents, and Jaime did not like to see them “too often”—but it was not strong. And the

State adduced evidence that Jaime had a life insurance policy that benefitted the appellant. (10 RR 207).

The appellant points to evidence of her good relationship with Jaime in the sufficiency section of her brief. (Appellant's Brief 189-91). Even assuming the State did not show a motive, motive is not a required element of murder. *Delacruz v. State*, 278 S.W.3d 483, 491 (Tex. App.—Houston [14th Dist.] 2009, pet. ref'd). The lack of a motive is an ambiguous circumstance the jury could have considered in its evaluation of the evidence, but which does not factor into a sufficiency review.

D. Conclusion: The combined logical force of the inferences of guilt here is sufficient to support the verdict.

Despite the length of this trial, the State's case was straightforward: The appellant was the only one at the scene at the time of the murder, she had adequate time to clean up and stage the scene, and she lied to police about a material issue to create an exculpatory explanation. The State established it was possible for the appellant to kill Jaime and stage the scene, including tying herself up and locking herself in the closet. There was no solid evidence supporting the exculpatory explanation of a home invasion. Thus, the evidence is sufficient to support the conviction.

Reply to Point Two

The trial court did not abuse its discretion in denying the appellant's motion for new trial based on alleged juror misconduct. The hearsay in defense counsel's affidavit is insufficient so support a finding of juror misconduct.

In her second point of error, the appellant alleges that the jury engaged in misconduct by experimenting with tying themselves up during jury deliberations. (Appellant's Brief at 196-202). The appellant raised this matter in her motion for new trial, which the trial court denied after a hearing. (CR 531-35). When a defendant raises a matter in a motion for new trial that is, after a hearing, denied by the trial court, the issue on appeal is whether the trial court abused its discretion in denying the motion for new trial. *Riley v. State*, 378 S.W.3d 453, 457 (Tex. Crim. App. 2012) *overruled on other grounds by Miller v. State*, 548 S.W.3d 497 (Tex. Crim. App. 2018).

At a motion for new trial, the trial court is finder of fact and determines the credibility of witnesses. *Colyer v. State*, 428 S.W.3d 117, 122 (Tex. Crim. App. 2014). The trial court may disbelieve testimony, even if it is uncontroverted. *Ibid.* In reviewing a trial court's ruling on a motion for new trial, a reviewing court views the evidence in the light

most favorable to the decision, and will reverse the trial court's decision only if the ruling was arbitrary or unreasonable. *Ibid.*

Nearly all of the appellant's motion for new trial concerned her claim that the evidence is insufficient. The only evidence of juror misconduct adduced at the hearing was an affidavit from one of the appellant's attorneys. (CR 537-38). The relevant part of the affidavit describes a post-trial conversation between the attorneys in the case and the jurors:

When the prosecutors asked the jurors what they thought of the demonstrations^[5] [one juror] stated that many of the jury members had tied themselves up to see if it was possible to get [loose] from the bindings. He stated that they had done a demonstration and that on the first day of deliberations, [another juror] was rolling around, tied up on the floor, and that she tried to get herself out of the ties and that they wanted to see how much you could see while rolling around and for how long.

(CR 537).

The State objected to "the hearsay part of the affidavit." (16 RR 6). The trial court "admitted" the affidavit. (16 RR 6). Even if this was

⁵ As the appellant explained in her motion for new trial, this was a reference to the prosecutor's in-court demonstration of tying "her own ankles and then her wrists in an effort to demonstrate that it was possible for a person to tie themselves up." (CR 531-32).

admitted, however, nothing required the trial court to give this vague hearsay statement enough credence to warrant a new trial.

When a party alleges juror misconduct in a motion for new trial, it must produce an affidavit from a juror who personally witnessed the misconduct, or show an excuse for not doing so. *State v. Sanders*, 440 S.W.3d 94, 105 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd) (reversing trial court's grant of new trial where defendant alleged juror misconduct but failed to provide affidavit from juror). An affidavit from a lawyer containing hearsay from a juror is an insufficient basis for a new trial. *Grant v. State*, 172 S.W.3d 98, 101 (Tex. App.—Texarkana 2005, no pet.) (trial court did not abuse discretion in not holding hearing on motion for new trial, where motion alleged juror misconduct but was supported only by hearsay in attorney's affidavit).

Aside from the hearsay aspect, the affidavit also violates Rule of Evidence 606, which states that a trial court “may not receive a juror's affidavit or evidence of a juror's statement” about “any statement made or incident that occurred during the jury's deliberations.” TEX. R. EVID. 606(b)(1). The only exceptions to this rule are if the juror's statement is used to show whether an outside influence was improperly brought to

bear on any juror, or to rebut a claim that the juror was not qualified to serve. TEX. R. EVID. 606(b)(2).

This affidavit fits into neither of those exceptions. In his brief the appellant tries to characterize the affidavit as describing an “outside influence” because, he says, the juror were tying themselves up “presumably at home (away from other jury members and deliberations.” (Appellant’s Brief at 198). Not only is that presumption unsupported by the affidavit—which facially describes only things that occurred during deliberations—but it also contradicts defense counsel’s argument at the motion for new trial, where he repeatedly said that all of the tying up occurred in the jury room. (16 RR 20-23). The affidavit does not specify what the jurors were tying themselves up with.

Thus the trial court was presented with an accusation of juror misconduct, but the only support for this accusation was a vague hearsay statement the Rules of Evidence specifically barred the trial court from considering.⁶ Even if the affidavit was “admitted,” the trial court, in as-

⁶ The State did not object under Rule 606, but that rule uses uncommonly obligatory language: “The trial court *may not receive*” a statement covered by the rule. If the State was the appealing party, there might be a legal question whether an objec-

sessing the credibility of evidence, could have disregarded it as insufficiently credible. *See Golden Eagle Archery, Inc. v. Jackson*, 24 S.W.3d 362, 373 (Tex. 2000) (trial court was free to disregard admitted hearsay testimony of juror misconduct: “[W]hile no objection was made to its admission to preclude the trial court from considering it, the trial court was nevertheless free on its own to disregard the testimony.”). Indeed, it is likely that granting the appellant’s motion on such a thin basis would have been an abuse of discretion. *See Sanders*, 440 S.W.3d at 105 (trial court abused discretion to the degree it granted new trial based on accusation of juror misconduct not supported by affidavit from juror). Accordingly the trial court did not abuse its discretion in denying the motion for new trial, and this Court should reject the appellant’s second point.

tion is needed to preserve a Rule 606 complaint. But here the State was the prevailing party, and the trial court’s ruling is being reviewed only for an abuse of discretion.

Conclusion

The State asks this Court to affirm the trial court's judgment.

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